

AG Contract No. KR02-1848TRN
ADOT ECS File No JPA 02-138
Project: RAM 202-B-506
TRACS: H 5299 03C
Section: SR 202L, Red Mountain
Gilbert Road-Higley Road
BUDGET SOURCE ITEM NO: 82902

INTERGOVERNMENTAL AGREEMENT
Landscape Maintenance
LANDSCAPE/ENHANCEMENT MAINTENANCE
Landscape Enhancements

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 15th Day of December, 2004, pursuant to Arizona Revised Statutes Sections 11-951 through 11-954 as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the City of Mesa, acting by and through its Mayor and City Council, (the "City"), collectively known as the Parties ("Parties").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and the City are in mutual Agreement to landscape certain areas with irrigation mains within the right-of-way on State Route 202L, herein after referred to as the "Project". Beginning at station 685+00, from centerline roadway west of Gilbert Road east to centerline roadway station 937+00 west of Higley Road for a total net distance of approximately 4.55 miles.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27263
Filed with the Secretary of State
Date Filed: 12/15/04

Janice K. Brewer
Secretary of State

By: Darryl D. Graenewald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement and subsequent to award of a contract, will invoice the City, for it's participation of the costs in the amount of \$194,439.00 associated with increased plant density, irrigation and aesthetic upgrades as outlined in Exhibit B, attached hereto and made a part hereof.

b. Prepare to State standards, design plans, specifications and other such documents and services required for the bidding and construction for the landscaping and irrigation mains and submit them to the City for concurrence.

c. Upon written concurrence of the final plans by the City, construct the Project at it's own expense, except for the City's participation costs associated with the Project.

e. Upon completion of the Project, invoice the City for any additional work requested by the City associated with the Project.

f. Hereby agrees to be authorized agent for the City in association with construction of the Project and on behalf of the City call for bids for the Project. Prior to the award of the construction project, the State will notify the City the bid amount to be awarded, which includes 14% construction engineering and administration costs and project contingency costs.

g. Award one or more construction contract(s) for the Project. Administer it and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation, for delays or whatever reason, attributable to the State.

h. Upon completion of the Project, and final reconciliation of the project costs, remitted to or collect from the City, as the case may be, any difference between the amount paid by the City and the actual costs for the project, including, but not limited to: design, construction and actual construction engineering and administration costs (not to exceed 14%), utilizing a detailed accounting provided by the Resident Engineer and the Project Manager for the Project.

i. Upon submission of a properly completed and acceptable State right-of-way Use Permit application, approve and issue same permit to City for work on City facilities within State Control of Access. State right-of-way Use Permit application shall be applied for and issued through the State's Phoenix Maintenance District Permits Office.

j. Maintain the landscaping and irrigation system, and pay for irrigation system electric, all generally within the Control of Access as designated in the Maintenance Exhibit A, including all testing, adjusting, repairing and operation of the irrigation system.

k. Issue a right-of-way permit at no cost to the City for the City's Booster Station at Val Vista Drive and the 202L.

2. The City will.

a. Upon execution of this Agreement and subsequent to award of a contract, remit to the State an amount of \$194,439.00 for the City's participation of the costs associated with the increased plant density, irrigation and aesthetic upgrades as outlined in Exhibit B.

- b. Designate the State as authorized agent for the City, for the construction administration of the Project.
- c. Coordinate with the State, for the review of design plans, specifications and other such documents and services required for construction of the Project. Provide review comments as appropriate, and review all change orders, which reflect additional compensation. Be responsible for any contractor claims for extra compensation attributable to the City.
- d. Be responsible for all costs for additional work requested by the City, associated with the Project,
- e. Furnish all potable or reclaimed water for landscape plant installation during the construction phase, and all water thereafter necessary to properly maintain the landscape at City's expense
- f. Authorize and pay or waive any water development fees.
- g. Be responsible for setting the water meter when ordered by the Contractor at the State's expense.
- h. Apply for a right-of-way Use Permit to use State Highway rights-of-way, for all work performed by the City in association with maintenance of the Project within the State's Control of Access. The Permit application shall be requested and approved through the State's Phoenix Maintenance District Permits Office.
- i. Maintain all landscaping, the irrigation system, and all utilities and features within the areas designated on Exhibit A, at the conclusion of the Project.
- j. Be responsible for all costs associated with the Project as defined and shown in Exhibit B, including design, construction and construction engineering and administration costs (construction engineering and administration costs not to exceed 14%) of the Project.
- k. At the conclusion of the contractor maintenance and warranty period, referred to in the construction contract as Landscaping Establishment, the City will maintain the irrigation system generally outside the Control of Access as designated on the Maintenance Exhibit A, including all testing, adjusting, repairing and operation of the irrigation system. At this time the City will assume responsibility of paying for electrical power necessary to operate the irrigation controllers and any booster pumps.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the work contemplated herein and reimbursements; provided, however, that this Agreement, except any provisions herein for maintenance, electrical power, and reclaimed water for landscaping as designated on Exhibit A & B, by the City, which shall be perpetual, may be cancelled with (30) thirty-days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.
2. This Agreement shall become effective upon filing with the Secretary of State
3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

6. Every payment obligation of State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007-3212
FAX: 602-712-7424

City of Mesa
City Manager
PO Box 1466
Mesa, AZ 85211-1466

9. Pursuant to Arizona Revised Statutes Section 11-952 (D), attached hereto, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

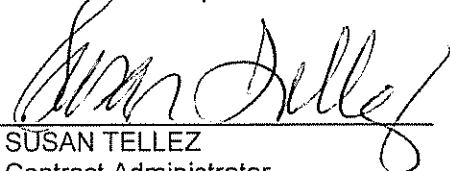
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF MESA

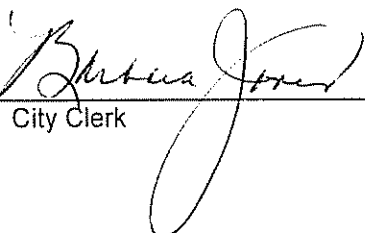
By 
MIKE HUTCHINSON
City Manager

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST:

By 
Barbara Jones
City Clerk



Revised 27 September 2004 ly

RESOLUTION NO. 8358

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR LANDSCAPE MAINTENANCE AND LANDSCAPE ENHANCEMENTS ALONG THE RED MOUNTAIN FREEWAY FROM GILBERT RD TO HIGLEY RD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, AS FOLLOWS:

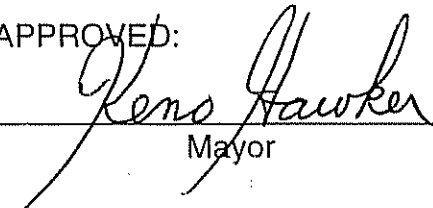
Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the Landscape Maintenance and the Landscape Enhancements along the Red Mountain Freeway from Gilbert to Higley Rd (ADOT JPA No. 02-138); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 15th day of November, 2004.

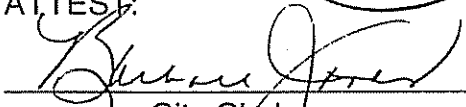


APPROVED:



Mayor

ATTEST:



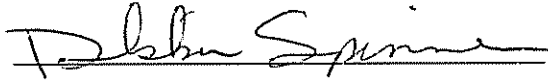
City Clerk

ATTORNEY APPROVAL FORM

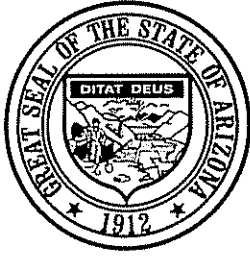
FOR THE CITY OF MESA

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24th day of November, 2004



Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

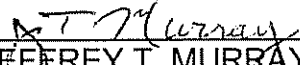
**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR02-1848TRN (**JPA 02-138**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 7, 2004.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General